INDEX

TABLE OF CASES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

NO. 378

ROY GRANT, JR., doing business as
No Sleet Windshield Heater Company,
Petitioner,

vs.

GENERAL MOTORS CORPORATION, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Because of the length and discursive character of the Alleged "Summary Statement of Matters Involved" (extending from page 3 through page 40 of Petitioner's Petition) and similar complexity of "Questions Presented," extending from page 41 through page 51, Respondents submit a short statement of the nature of the action and the orders the review of which is requested.

In limine, no record has been printed, no copy of the typewritten record has been served on counsel for Respondents, and Petitioner's brief does not refer to the official record, nor is there any way in which Respondents' counsel can refer thereto because they are entirely unadvised as to the content or pagination thereof. Petitioner has seen fit to serve on one of Respondents' counsel

a purported Transcript of Record, which was never certified by any court official and contains a mass of material foreign to the issues and which is not of record.* Because of this situation reference will *ex necessitate* be made thereto, although it obviously can have no standing whatever.

STATEMENT OF FACTS

Petitioner commenced an action at law in the District Court of the United States for the Eastern District of Wisconsin on May 12, 1945, claiming *inter alia* that Respondent General Motors Corporation infringed the expired Birely Patent No. 1,630,921 for windshield cleaners and joining various other defendants, including several law firms and individual attorneys who were charged with negligence, dereliction of duty, etc., in refusing to represent Petitioner herein, all in no wise connected with the aforesaid cause of action for patent infringement. General Motors Sales Corporation was likewise made a party. There were other allegations as to alleged violation of the anti-trust laws of the United States (no special damage being averred), and violation of the criminal laws of the State of Michigan, etc.

The law firms and individual defendants moved to dismiss on the ground that there was no diversity of citizenship as to them and on various other grounds, and these motions were granted and no appeal was taken therefrom (Tr. 172). Counsel for Respondent General Motors Sales Corporation moved for dismissal as to it on the ground that that corporation had been dissolved more than three years prior to the commencement of the

* One copy each of the Petition and "Transcript of Record" was served on Louis Quarles, Counsel for Respondent. Request for service of additional copies on Drury W. Cooper and David A. Fox, also Counsel for Respondent, has been ignored by petitioner.

action. Both corporations moved to dismiss the complaint for failure to state a claim upon which relief could be granted or in the alternative to strike certain portions of the complaint. On July 2, 1945 the Court denied the motion of the corporate defendants to dismiss, granted leave to plaintiff to amend the complaint and reserved consideration of the remainder of the motion subject to the filing of said amended complaint.

Petitioner then filed an amended complaint (Tr. 81-92). The two corporate defendants again moved with respect to the amended complaint to dismiss Count I thereof as to General Motors Sales Corporation on the ground that none of the acts complained of therein were charged against it (Tr. 93-94); and to dismiss Count II as to both General Motors Corporation and General Motors Sales Corporation on the ground that this Count did not state facts for which a remedy was given under the Anti-Trust Laws since no special damage was alleged (Tr. 94). Certain other parts of the amended complaint were sought to be stricken (Tr. 94-95).

On November 13, 1945 the District Court filed its opinion on this motion in large part sustaining it (Tr. 112-114). On November 29, 1945 the Court entered an order in accordance with its opinion (Tr. 144-146). This order dismissed Count I of the amended complaint as to General Motors Sales Corporation because no cause of action for patent infringement was charged against it. It dismissed all of Count II of the amended complaint against both corporate defendants because it did not state facts upon which any relief could be granted under the Anti-Trust Laws. The order also struck certain parts of the complaint which were either unintelli-

gible or foreign to any facts upon which any relief could be granted.

In an effort to deter entrance of the above order Petitioner filed on November 29, 1945 a long, rambling affidavit containing much irrelevant and scandalous matter, and on December 4, 1945 the Court on its own motion entered an order directing "that the matter indicated by the reporter's markings upon (the) affidavit filed by * * * Roy Grant, Jr., November 29, 1945, be and the same is hereby stricken as scandalous". (Tr. 151, 152). The affidavit containing the scandalous matter is found at Tr. 131-142, but the underlining designating the stricken matter is not shown so that the Court's ruling cannot be ascertained therefrom.

On November 26, 1945 Petitioner applied for a judgment by default (Tr. 122-130). This application was denied by order dated December 4, 1945 (Tr. 150). General Motors Corporation was never in default (Tr. 146-148).

On December 15, 1945, within the time provided therefor by order of the District Court, General Motors Corporation filed its answer to those parts of the amended complaint which were not stricken, denying infringement of the Birely patent in suit and setting up affirmative defenses thereto (Tr. 173-177). *There was thus left before the District Court a full charge of patent infringement against General Motors Corporation which was then at issue and is now awaiting trial.*

Petitioner appealed to the United States Circuit Court of Appeals for the Seventh Circuit (Tr. 152) with respect to three orders, namely: (1) the order of November 29, 1945 (Tr. 144-6), which dismissed Count I of the

amended complaint as to General Motors Sales Corporation, dismissed the purported Anti-Trust charge of Count II as against both defendants, and struck parts of the amended complaint; (2) the order of December 3, 1945 (Tr. 150) which denied Petitioner's application for judgment by default; and (3) the order of December 4, 1945 (Tr. 151-2) which struck the scandalous matter from the affidavit of the petitioner.

After the petitioner's appeal was docketed, and on February 6, 1946, the corporate defendants moved to dismiss the appeal (Tr. 189-91) on the ground that the action was still pending and untried as against the defendant General Motors Corporation and that the orders appealed from were not final judgments but merely interlocutory orders and not appealable. On March 12, 1946 the United States Court of Appeals for the Seventh Circuit dismissed Petitioner's appeal in the following language (Tr. 230):

> "It is ordered and adjudged by the Court that this appeal be, and the same is hereby dismissed, for the reason that the orders appealed from are interlocutory and not final."

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari shoud be denied because:

1. The Petition and Brief do not conform with Rule 38. Among other things, the Petition (a) is "not accompanied by a certified transcript of the record in the case" as required by Rule 38 (1) of this Court; (b) the purported printed transcript of record is not certified and violates paragraph 8 of Rule 38; (c) the petition does not contain "a summary and short statement of the matter

involved" as required by Rule 38 (2) of this Court; (d) does not set forth "the questions presented" as required by Rule 38 (2) of this Court, in an intelligible form; (e) does not set forth "the reasons relied on for the allowance of the writ" as required by Rule 38 (2) of this Court in an understandable manner; (f) it makes no references to the official record; and (g) the supporting brief is not "direct and concise" as required by Rule 38 (2) of this Court; for any one of which reasons the Petition should be denied.

2. The orders of November 29, December 3 and 4, 1945 are interlocutory, not final, and do not grant or deny an injunction and therefore no appeal lies from them.

3. The Petition further should be stricken from the files of this Court because of the embodiment therein of scandalous matter.

ARGUMENT

I.

THE PETITION AND BRIEF DO NOT CONFORM WITH THE RULE.

Supreme Court Rule 38 is clear and neither the Petition nor the Brief comply therewith.

(a) The Petition Is Not "Accompanied by a Certified Transcript of the Record in the Case."

No copy of the typewritten transcript of the record has been served upon counsel for Respondent. In its place a printed booklet designated "Transcript of Record" prepared by Petitioner, containing briefs and other matter *dehors* the record, and showing in no wise any certifica-

tion of the original by any authorized official, was served, like the Petition, on *one* only of Respondent's counsel.

On pages 256-7 of the purported record it appears that such purported record was certified by the Petitioner, no such certification of a record being authorized by law. No other certification appears. This is in clear violation of Rule 38(1) of this Court, which provides that:

> "A petition for review on writ of certiorari of a decision of * * * a circuit court of appeals * * * shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed."

(b) The Purported Record, Which the Petitioner Tried to Certify, is not Only Not an Official Record, But Violates Paragraph 8 of Rule 38 by Including a Mass of Material Not Essential to the Consideration of the Questions Presented.

Without laboring the point, we call attention to but a few of the inaccuracies and additions to the record which are not proper parts thereof:

Narrative of Hearing, re. Morsell, et al (Tr. 22-24). This is not a reporter's transcript of any hearing on May 28, 1945. It appears to have been made up by the Petitioner, for it is noted that the following appears near the middle of page 22

> "*Proceedings not officially stenographically reported on May 28, 1945.
>
> "official stenographer pursuant to Rule 80(b) F.R.C.P., not visible *propria persona*)".

Pages 16-32 and 43-71 have to do only with proceedings, including numerous memoranda, whereby the law firms and individual lawyers moved to dismiss the complaint as to them. All of these motions were granted (Tr., 172) and Petitioner did not appeal to the Court of Appeals with respect to them (Tr., 152). These proceedings have no place in the record.

The following pages of the record contain nothing but briefs by counsel for the Respondents or by Petitioner and are not a part of the record: 16-17, 29-30, 31-32, 35-42, 47-52, 57-60, 67-71, 73-80, 95-112, 117-121, 122-130, 147-149, 191-194, 199-208.

(c) The Petition Does Not Contain a "Summary and Short Statement of the Matter Involved."

Under the above heading Petitioner's statement commences on page 3 of his Petition and ends on page 39 thereof. It is neither summary nor short and is full of rambling, incoherent statements which do not satisfy the first provision of Rule 38 of this Court.

(d) The Petition Does Not Set Forth "The Questions Presented" as Required by Rule 39 (2) of This Court, in an Intelligible Form.

The questions presented are twenty-six in number and are found at pages 41-51 of the Petition. Each consists of a long conglomeration of words often without a main verb, and often unintelligible. With this type of presentation it is not seen how the court can consider the questions under the rule.

(e) The Petition Does Not Set Forth "The Reasons Relied on For the Allowance of the Writ" as Required by Rule 38 (2) of This Court.

An examination of Petitioner's Brief under this heading, pages 51-54, shows their utter lack of substance. They are also vague and indefinite, and with difficulty understandable.

(f) No References Are Made to the Official Typewritten Record.

The supporting Brief does not refer to the official record, and this notwithstanding the fact that attention was specifically called to this requirement by the Clerk (Tr., 255-6).

(g) The Supporting Brief Is Not "Direct and Concise" as Required by Rule 38 (2) of This Court.

Here again the Brief is so difficultly worded that an understanding thereof is in part impossible.

It is the well settled policy of this Court that a failure to comply with the requirements of Rule 38 is a sufficient reason for denying a petition for certiorari. See *United States v. Rimer,* 220 U.S. 547; *Furness, Withy & Co. v. Yang Tsze Insurance Assn.,* 242 U.S. 430; *Houston Oil Co. v. Goodrich,* 245 U.S. 440; *Layne & Bowler Corporation v. Western Well Works,* 261 U.S. 387, 392; *Magnum Import Co. v. Coty,* 262 U.S. 159, 163; *Southern Power Co. v. North Carolina Public Service Co.,* 263 U.S. 508.

II.

THE PETITION SHOULD BE DISMISSED BECAUSE THE CIRCUIT COURT OF APPEALS HAD NO JURISDICTION TO DO OTHER THAN IT DID, SINCE THE ORDERS APPEALED FROM ARE INTERLOCUTORY AND NOT FINAL.

There are three orders from which Petitioner took an appeal (Tr. 152). The first of these, i.e., the order of November 29, 1945 (Tr. 144), is quite long but its effect is simple, i.e., to leave a cause of action standing to be tried. The other two orders (Tr. 150 and 151) are short and purely incidental. All of them are clearly interlocutory and not final.

(1) The Order of November 29, 1945.

This order (a) dismisses one part of the amended complaint as against defendant General Motors Sales Corporation, (b) dismisses another part of the amended complaint as against both defendants General Motors Sales Corporation and General Motors Corporation, (c) strikes certain parts from the amended complaint as left standing against defendant General Motors Corporation. The action for patent infringement is still pending and untried against the defendant General Motors Corporation (see answer to the amended complaint as further amended by order dated November 29, 1945)—(Tr. 173). Under the decisions this order is not a final judgment within Sec. 225 of the Judicial Code (28 USCA 225) which provides that "The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error *final* decisions * * *." Appeals cannot be taken piecemeal and to be appealable a judgment must be "final not only as to all the parties but as to the whole

subject-matter and as to all of the causes of action involved." *Collins v. Miller*, 252 U.S. 364, 370. As this Court long ago said in *Bostwick v. Brinkerhoff*, 106 U.S. 3, 4:

> "The rule is well settled and of long standing that a judgment or decree to be final, within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeals and writs of error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered."

A dismissal as to some defendants, leaving the cause of action pending against others, is not such a judgment and is, therefore, not appealable. *Hohorst v. Hamburg-American Packet Co.*, 148 U.S. 262; *Bank of Rondout v. Smith*, 156 U.S. 330; *Bush v. Leach*, 22 F. (2d) 296 (C.C.A. 2); *Menge v. Warriner*, 120 Fed. 816 (C.C.A. 5); *General Electric Co. v. Allis-Chalmers*, 194 Fed. 413 (C.C.A. 3); *Atwater v. North American Coal Corp.*, 111 F. (2d) 125 (C.C.A. 2); *Moss v. Kansas City Life Insurance Co.*, 96 F. (2d) 108 (C.C.A. 8); *Schultz v. Manufacturers & Traders Trust Co.*, 103 F. (2d) 771, 772 (C.C.A. 2)

(2) The Order of December 3, 1945.

The order of December 3, 1945 (Tr. 150) is an order denying Petitioner's application for a default judgment and granting Respondent twenty days within which to answer Petitioner's amended complaint. The time within which defendant had to answer had not begun to run at the time that this order was entered, as up until that time Petitioner had not elected whether he would amend his complaint or stand thereon. In any event, the order

was discretionary, interlocutory and not final. *Luhrig Collieries Co. v. Interstate Coal and Dock Co.*, 287 Fed. 711, 713, (C.C.A. 2); *Mandel Bros. v. Victory Belt Co.*, 15 F. (2d) 610, 611 (C.C.A. 7).

(3) The Order of December 4, 1945.

The order of December 4, 1945 (Td. 151-2) is one entered on the court's own motion, striking certain portions of an affidavit of plaintiff as scandalous. This, like any other order to expunge, is interlocutory and not appealable. *Schultz v. Manufacturers & Traders Trust Co.*, 103 F. (2d) 771 (C.C.A. 2).

The appeal should never have been taken and the circuit court of appeals was correct in dismissing it.

III.

THE PETITION SHOULD BE STRICKEN FOR SCANDAL.

The Petition, under the heading "Summary Statement of Matters Involved", commencing on page 3 and extending through page 39, is replete with gratuitous and unwarranted aspersions upon court and counsel: e.g., the courts (the District Court and Court of Appeals) are charged with "malfeasance" (page 3); certain officers of the court are charged with "unprincipled misfeasance and/or lack of adherence to fidelity"; defendant's counsel and the trial judge are charged with "grossly aggravating-assaults, of unfairness and injustice, of intemperate, scandalous, hot-fanatical, professional and partisan allegations" (p. 3) etc.

On page 5 other defendants, i.e., law firms and individual partners against whom the case was dismissed

and as to whom no appeal has been taken, are gratuitously charged "with malfeasance, moral turpitude, gross negligence and dereliction and breaches of duties, misleading the complainant and other unfairness involving violations of attorneys' oath," followed by long purported quotations from matters not of record extending through page 11.

A petition initiated with scandalous assertions is not one which should appeal to this Court, and should be stricken because of the scandalous matter contained therein. This Court has heretofore disapproved of the procedure followed by petitioner.

In *Green v. Elbert,* 137 U.S. 615, 624, this Court said when striking from the files of this Court the brief of the plaintiff:

> "We regret that we find ourselves compelled to add something further. The printed argument of plaintiff in error contains many allegations wholly aside from the charges made in his complaint, and bearing reproachfully upon the moral character of individuals, which are clearly impertinent and scandalous, and unfit to be submitted to the court. It is our duty to keep our records clean and free from scandal."

This ground alone is justification for the denial of the petition.

CONCLUSION

It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

DRURY W. COOPER,
LOUIS QUARLES,
DAVID A. FOX,
Counsel for Respondent.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 378

ROY GRANT, JR.,

DOING BUSINESS AS

NO SLEET WINDSHIELD HEATER COMPANY,

Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,

A FOREIGN CORPORATION, ET AL.,

Defendants-Appellees,
Respondents.

PETITION TO RECONSIDER PETITION FOR WRIT OF CERTIORARI.

ROY GRANT, JR.,
Milwaukee, Wisconsin,
Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

SUBJECT INDEX.

AUTHORITIES CITED.

TEXT BOOKS CITED.

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By Reference, Re Defendants' Motion to Dismiss in Trial Court (Tr. 156 to 168 Incl.)

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Rules:

By Reference, Re Defendants'

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Authorities:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Docket No. 378

ROY GRANT, JR.,
DOING BUSINESS AS
NO SLEET WINDSHIELD HEATER COMPANY,
Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
A FOREIGN CORPORATION, ET AL.,
Defendants-Appellees,
Respondents.

PETITION TO RECONSIDER PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

ROY GRANT, JR., petitioner herein, presents herewith his petition for rehearing of the above entitled cause, as provided for by Rule 33 of the Rules of the Supreme Court of the United States. Your petitioner further respectively certifies that the petition for rehearing is presented in good faith and not for delay.

ROY GRANT, JR.,
Petitioner.

May it please the Court:

I.

General Statement of Issues Involved on Motion for Review.

Certain and material verified points or averments and/or several connected matters of verified ultimate fact, including fraud practiced by the corporate defendant, General Motors Corporation, before the United States Patent Office, resulting in the issue of a patent to General Motors Corporation wherein fraud is alleged to be present, this said patent, thus fraudulently obtained by the corporate defendant, General Motors Corporation, resulting in prejudice (on advice of counsel) to plaintiff's property rights, were summarily dismissed by the trial court on defendants' attorneys demurrer or motion to strike the complaint (Tr. 1, 126) or certain parts thereof. In addition, a full separate count (Count 2) (Tr. 138) of plaintiff's several claims for relief was also summarily dismissed by the trial court on defendants' attorneys demurrer or motion to strike.

The said demurrer or motion to strike (Tr. 143) was heard before the trial court on September 10, 1945. It was met with the plaintiff's opposition on file (Tr. 156 to 169). The determination (Rule 78, F. R. C. P.) of the court was not set forth on September 10, 1945, as the court took the matter under advisement. (p. 31, Petition for Writ of Certiorari.)

However, after the hearing, the determination and disposition of the demurrer seemingly was a major operation. The court's formal opinion was rendered, 64 days later, on November 13, 1945 (Tr. 170).

A reading of the trial court's formal opinion (Tr. 170) will clearly and simply show the perverse abuse of discre-

tion to which the plaintiff was subjected to by the trial judge. Further shown is the manifest failure of justice set forth in the trial judge's opinion because of circumvention of the commanding procedural laws of the Federal Rules of Civil Procedure whereby a person's substantive rights mandatorily cannot be destroyed by procedural machinations.

Briefly, on one point, the trial judge's formal opinion dismissed material averments which the F. R. C. P. prescribe as proper matters to be pleaded; full counts were dismissed; and the only right to amend the complaint was restricted to only "one" word although this part of the opinion of the trial judge was not raised on demurrer or motion to strike. Yet, all these verified averments and full counts were admitted on the corporate defendants' attorneys' motion to strike or demurrer.

However, the court in its major operation of said dismissals requiring 64 days for the court's formal opinion, even though fraud was thus admitted on demurrer by defendant, General Motors Corporation, the court refused jurisdiction of the alleged injury to plaintiff by the verified averment of fraud in the complaint. Thus, in this certain verified fraud allegation, the plaintiff is left with his injury, denied equal protection of the laws, by the trial judge, and the defendant corporation, General Motors Corporation, goes scot free and is not required to answer the verified allegation of fraud resulting, at least, in private injury to plaintiff for the reason, counsel sought by plaintiff, did rely with full faith and credit on the official records of the United States Patent Office, and said counsel held the patent, No. 1,694,757, of the General Motors Corporation, allegedly fraudulently obtained and so admitted on the corporate defendants' motion to strike, as a complete response to the Birely Patent, No. 1,630,921, in this suit. In this connection, with no complaint on file and in view of the

Statute of Limitations, the amount of recovery possible was being reduced with each day passed.

In *Niles* v. *Anderson,* 5 How. (Miss.) 366 the court held,—

> "If the bill contains an allegation of fraud, it must be denied by answer, whatever defense may be adopted to other parts of the bill, because fraud gives jurisdiction to the court and lays a foundation for relief. * * *"

Briefly, on other points of the corporate attorneys' motion to strike, or demurrer, the major operation resulting in the trial court's formal opinion, the trial court changed the appearance or classification of each point of the motion to a self sufficient motion within itself. Thus, the rule of law *re* demurrer was expediently circumvented, to the advantage of the corporate defendants, to wit,—

> "Demurrer may be to the whole or a part of the pleading; but if to the whole, and a part be good, the demurrer will be overruled,—
>
> *Pinkum* v. *City of Eau Claire,* 81 Wis. 301, 51 N. W. 550.
>
> *Brown* v. *Duchesne,* 2 Curt. C. C. 97, Fed. Case No. 2,003."

This court's attention is also directed to the concrete fact that the corporate defendants' attorneys did not present a motion or demurrer seeking to have the verified complaint made more specific and certain. No procedural remedy of this nature was sought.

The intent to clearly continue through with additional fraud before the United States District Court, the fraud to be adopted by a United States District Judge, the trial judge, is further in evidence in the record of this action before the trial judge.

The corporate defendants' attorneys, Lines, Spooner and Quarles, fully recognizing the "SNEAK" attack on the veri-

fied complaint, hurried to scuttle the complaint and the plaintiff's substantive rights and quickly served notice and an order, premised, not truthfully or honestly, on the court's sinister formal opinion, but rather, shockingly premised on "Entry Upon the Court's Opinion".

The stealthy significance of the "Entry Upon Order" by the corporate defendants' attorneys is a matter of record (Tr. 176-178).

II.

Order No. 562 Entered by Clerk.

Plaintiff submitted strong opposition (Tr. 201-217, Incl.) to the unrighteous unruly attempt of the corporate defendants' attorneys for "Entry Upon" the court's formal opinion. However validity to plaintiff's answer (Tr. 201-217) to order of the court was not granted by the court, and plaintiff's substantive rights were thus contemptuously brushed aside by "Entry Of" the corporate defendants' attorneys order which did stealthily "Enter Upon" the court's formal opinion. The trial court adopted verbatim the "STEAL" order, parts of **which infringed "Due Process of Law" and "Equal Protection of the Law"** to the prejudice of the plaintiff yet, to the immense, unfair, illegal advantage of the corporate defendants. Thus, the corporate defendants' attorneys order was entered as No. 562 on the records of file in this action by the clerk of the trial court on November 29, 1945 (Tr. 220 to 222).

It would seem beyond question, a careful analysis of the court's opinion (Tr. 170 to 174), the plaintiff's answer to the court (Tr. 201 to 217), and the "Entry Upon" order of the corporate attorneys adopted verbatim by the trial judge (Tr. 220 to 222), fully establishes how well the corporate defendants' attorneys had "cased the job" of defrauding

the plaintiff out of his substantive rights and the aiding and abetting by collusion by the trial judge in yielding, puppet like, to the said corporate attorneys.

III.

Order No. 567 Entered by Clerk.

On December 3, 1945, order No. 567 was entered on the record of this action in the trial court clerk's office. This order appears at Tr. 228, and page 15 of the certified transcript of analogous proceedings appears at Tr. 229. A careful reading of both subjects and a free and unrestricted sound interpretation clearly shows that the true meaning of words expressed by the plaintiff before the court have been irreconcilably interpreted into an interpretation devoid of good faith and common sense as expressed by the order No. 567. The ultimate fact is the said order makes false the records of the United States Court, because the plaintiff, under the circumstances and without a judgment of the court on plaintiff's applications for judgments by default (Tr. 190 to 199, Inc.), did *not* elect before the court or at any other time elect to be foreclosed by the court and thus assert his election to stand on "only" the first amended complaint. In fact, it is clearly understood the trial judge granted a consolidation of the original and amended complaint (Pages 25 and 26, Petition for Writ of Certiorari). No other reasonably honest and sensible interpretation can be placed on the trial judge's assertion, to wit,—

"The Court: All right. Go ahead."

For that reason, again, the said order of the court, No. 567, makes false the records of the United States Courts.

Uneven Handed Justice—No Answer From Corporate Defendants in 205 Days.

And thus, in addition, said order of the court, No. 567, adversely prejudices the plaintiff for the reason the corporate defendants' attorneys have not shown cause, to say nothing of good cause (Rule 55 (c) F. R. C. P.) why the entry of judgments by default should not be entered since 205 days have been interposed between May 12, 1945 the date of filing complaint, and December 3, 1945 the date of hearing plaintiff's applications for judgments by default against the corporate defendants without service of the corporate defendants' answer (Tr. 190 to 199 Incl.).

Super Privilege Anarchy For Corporate Defendants and Corporate Defendants' Attorneys.

With exaggerated callousness for the provisions of "time for answer" as provided for by the Federal Rules of Civil Procedure, Rules 12 and 15, and apparently with intent of making the little fellow a dupe (the plaintiff, a layman) the trial judge in seeming servitude to the corporate defendants and the corporate defendants' attorneys, in effect, arrogantly slammed the door on the plaintiff's applications for judgments by default, and denied due process of full hearing of one of said plaintiff's applications, and denied a hearing, in any sense on the final application for judgment by default against the corporate defendants (p. 36, Petition for Writ of Certiorari).

IV.

Corruption.

Order No. 569 Entered by Clerk.

On December 4, 1945, order No. 569 was entered on the record of this action in the trial court clerk's office. This order appears at Tr. 230. And this order is Corruption with a capital "C" by any sane principle of interpretation in good faith. The order is the product of presumably honest and reputable "brethren" of the law fraternity and officers of the court, *e. g.*, the corporate defendants' attorneys, members of the law firm of Lines, Spooner and Quarles, Attorneys at Law. Yet, irreconcilable to any interpretation rule the excerpt by the otherwise presumedly "pious" attorney Louis Quarles, attorney for the corporate defendants, the said excerpt from the certified transcript of proceedings, page 15, of December 3, 1945 appearing at printed Transcript of Record 229, and the said excerpt again appearing in this plaintiff's petition before this Supreme Court for Writ of Certiorari, at pages 36 and 37, the excerpt read with this said attorney's order No. 569 clearly carries away and voids any other contention except the most bold assertion of valid ultimate fact plainly alleging unconscionable imposition of invented fraud, as supported by the record, cast onto the United States Courts and court records by attorney Louis Quarles, a hired professionalist, and adopted verbatim by the trial judge over his signature.

The record is clear. The words are simple. And the outrageous fraud an imposition on intelligence, **and a violation of the penal statutes of the United States Code.**

The true record in this action vigorously supports the truth of the foregoing alleged fraud, collusion and corrup-

tion designedly projected to maliciously destroy or injure, delay and prejudice the impartial adjudication of this plaintiff's claims for relief.

The irreconcilable statements of Attorney Louis Quarles having fraud for a foundation are,—
excerpts,

Quarles:

"* * * I have underscored certain parts in red."

"I have indicated them in red in the affidavit, copy of it" (Tr. 229).

and excerpts, from Quarles' order, adopted by the trial judge, and entered as Order No. 569 by the court clerk,—

Quarles:

Clause 1, "* * * the same being indicated by the reporter's markings upon said Affidavit of said Roy Grant, Jr., filed in this matter November 29, 1945;

Clause 2, "* * * the matter indicated by the reporter's markings upon said Affidavit * * *" (Tr. 230).

V.

Conclusion and Conspiracy. Corporate Defendants' Attorneys And the Trial Judge Deprive Plaintiff of Civil Rights and Equal Protection of the Laws.

The introductory prefix or condition of plaintiff's prayer in his original complaint (Tr. 19) is, to wit,—

"Wherefore, as the said defendants, General Motors Corporation and General Motors Sales Corporation, *and those controlled by defendants,* * * *." (Emphasis supplied.)

In or at the beginning of the crime to destroy plaintiff's civil rights, the trial judge *rather* than use the power of the United States Courts to prevent any other person, or persons, from depriving this plaintiff citizen of the United States of the equal protection of the laws, the trial judge as evidenced by the judicial determinations of the proceedings of record heard before him, the trial judge seemingly with deep rooted antagonism for the plaintiff's relief and/or with crass repulsive, offensive and disgusting opposition to the prescribed substantive rights of the plaintiff, and with seemingly medieval anarchaic disregard transcending the prescribed Federal Rules of Civil Procedure, **the trial judge did fail to do so prevent other person, or persons, from depriving this plaintiff of the equal protection of the laws.**

At page 15 of the certified transcript of proceedings, dated December 3, 1945, what the trial judge simply understood in connection with certain material verified averments of the complaint in this action, appears from the record precisely, thus,—

> "The Court: You filed a complaint here in which you joined in about a half dozen different attorneys and you claimed they were in conspiracy against you, * * *."

For emphasis now, the attention of this court is again directed to the words of the prefix to the prayer of the complaint set out hereinbefore, *e. g.*,—

> "* * * the said defendants, General Motors Corporation and General Motors Sales Corporation, *and those controlled by defendants,* * * *" (Emphasis supplied.)

Other evidence of the abuse of discretion grossly lacking in sensibility or refinement of the trial judge is in evidence within the trial judge's formal opinion (Tr. 173). Quote,—

> "However, as stated heretofore, the plaintiff is a layman and should not be held to the same fine choice of language that one skilled in the law would use."

Aside from the supple derogatory inference contained therein said quotation with respect for the plaintiff, it is obvious a clear inherent inference is that attorneys (and the trial judge, a lawyer) are estopped from abusing legal proceedings by unconscionable assaults of confusing contradictions of literary words or oral expressions resulting in **standard villainies of "cheating", and "chiseling", and "swindling"** the adverse party, at least, out of his inalienable substantive civil rights. In fact, the United States Code, if not winked at, provides for the protection of civil rights by proper authorities (Chapter 3, Title 8 United States Code).

At page 8, of corporate defendants' attorneys document before this court, entitled "Brief in Opposition to Petition for Writ of Certiorari", and item (d) thereof, is found a subterfuge (a subdivision indicated as (2) is not enclosed within Rule 39 of this court) so unsubstantial in merit that it is clear the corporate defendants' attorneys must grasp any fakery and/or frantic excuse on the supposition **they may escape the consequences of the fraud and collusion of their close working alliance with the trial judge resulting in the denial of civil rights to the plaintiff.**

Yet, the plaintiff does not believe this court can be so easily distracted and diverted from the primary to unsuitable secondary issues. Nevertheless, it seems to be pertinent for this court to consider if the cynical remarks of the corporate defendants' attorneys in connection with a main verb is not analogous, to the popular version, of the rich and the superior powerful who put the dollar sign above justice, and of the "ham acting" of self-professed intellectuals wagging parasitically as self-branded "holier than

thou'' and being neither wired for any such feelings as shame or modesty, **indulge in an arrogant social consciousness tolerating any sense of guilt on the premise their syrupy literary trash would blind out the real issues on appeal but would not reveal deceit as the product of a verbomaniac,** but thus, foreclose execution of the laws and/or foreclose to a person the protection of his civil rights in the United States Courts.

The end result of the bad wicked technique of the corporate attorneys is obviously to judicially as well as economically exploit the plaintiff in this action. However, maintenance of the plaintiff's ''verified'' complaint and maintenance of the subsequent quarrel which has developed since the filing of the complaint is premised not only on the full legal protection of plaintiff's substantive rights but, is also premised on the plaintiff's (a layman's) **full faith and belief in the integrity traditional with the United States Courts.**

Accordingly, the realism of the Statement of Points on Appeal to the Circuit Court of Appeals for the Seventh Circuit (Tr. 283 to 293), which the plaintiff intended to rely on, takes on superior significance under the supervisory authority of the Supreme Court of the United States in connection with, **either singularly or in the conjunctive, the acts of abuse of discretion, fraud, fraud and collusion, and judicial determinations of the lower level United States Courts.**

Plaintiff's Notice of Appeal was duly filed on December 19, 1945 and incorporates verbatim the orders (or parts thereof) entered by the trial court from which the plaintiff appealed (Tr. 232 to 235).

VI.

Complete "Official" Record Designated.

Pursuant to Rule 75 (d), F. R. C. P., plaintiff designated only the "complete" official known record (Tr. 254 to 263).

Plaintiff's Statement of Points appears at Tr. 283 to 293 and therein is set forth twenty-six separate grievances.

Substantially the twenty-six questions presented to this court, pages 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of the plaintiff's petition for Writ of Certiorari, contain, for all practical purposes, a restatement of the Statement of Points submitted to the Appellate Court.

On January 25, 1946, the clerk of the district court, *taking upon himself without other authority,* obtained the collusion of the trial judge and an extension of time (10 days now appears in the trial court records, see appendix, *post*) for the purpose of delaying beyond 40 days (Rule 73 (g), F. R. C. P.) the filing of the certified transcript of record on appeal.

Subsequently, it appears that on the 28th day of January, 1946 the clerk of the trial court, finally at his ultimate convenience, certified an appeal record (Tr. 297) under the seal of the United States District Court for the Eastern District of Wisconsin.

A reading of plaintiff's Notice of Appeal (Tr. 231 to 235) is convincing the orders appealed from are set out verbatim and the corporate attorneys, and the trial judge, could not have been misled.

During the interim of Plaintiff's Notice of Appeal and the Certification of Record by the trial court clerk to the Circuit Court of Appeals for the Seventh Circuit, the corporate defendants' attorneys did not desire to docket

the appeal for a preliminary hearing in order to make in the Appellate Court a motion to dismiss (Rule 75 (j), F. R. C. P.). No such motion is of record, or at least it is not known to this plaintiff.

The certified record was examined by the plaintiff in the office of the Clerk of the Appellate Court on January 30, 1946 *after* the record had been transmitted to the Appellate Court. It was plain, clear, and open to the mind that the "certified" record had been falsified and the responsibility for mutilation, substitution and other acts of falsification of the certified record was the failure of the duty of the clerk of the trial court to certify a true record resulting in the actual certification of a false record.

The "certified" record had been transmitted to the Appellate Court and immediately thereafter the said examination by plaintiff on January 30, 1946 an Emergency Petition for Correction of the Record was drafted (Tr. 344-345) in conjunction with an other Emergency Petition to Void, But Not Expunge from the record the corporate attorneys' Motion to Dismiss plaintiff's appeal for want of jurisdiction to this Circuit Court of Appeals for the Seventh Circuit (Tr. 311 to 315).

Rule 75 (h), F. R. C. P., re objections to record and power of court to correct records, gives the Appellate Court as a matter of right the power to hear a petition on the generalization of words e. g., on a proper suggestion and the Appellate Court to direct the correction of the record.

VII.

Purity.
Purity Denied and Destroyed
by
Circuit Court of Appeals
Seventh Circuit.

However the plaintiff's petition to correct the record (Tr. 344-345) was denied by the Appellate Court, (Tr. 358). And, it is held, when convenient by the corporate attorneys, the courts of "truth and honesty" should erect an "iron wall" and deny from expose criminal acts which destroy "purity", in its principal sense, in the court records. Such a fantastic monstrous quack reasoning by the corporate defendants' attorneys should not cause this court to fail in its plain duty, toward the providers of scandel and toward the perpetrators of scandalous felonious conduct resulting in false, fraudulent records of the United States Courts, and thus, with honesty, this court should cause or force the correction of false records of the United States Courts.

Thus, the subject matter of "corruption" in the United States Courts records under seal in this action having been called to the official attention of this court by the issues disclosed in the plaintiff's printed Petition to Correct Diminution of Record submitted to this court, the "corruption" should not be allowed to continue to disabuse the minds of interested parties now, or at any future time at which the United States Court records may be reviewed.

The Code of Laws of the United States does *not* privilege the attorneys of adverse litigants in the falsification of court records and/or does not privilege officers of the United States Courts in the mutilation, substitution and

other acts of falsification of the records of the United States Courts under the certification of the court clerk and under the seal of the United States District Court.

Opposed to the theory as expressed by the Appellate Court, the plaintiff insists Rule 75 (h), F. R. C. P., does not direct or require the deficiencies to be enunciated within the petition, nevertheless, it is shocking, in the interests of truth, morality, and justice to find the Appellate Court supporting, for as long as the fractional part of a fleeting moment, the falsification of the United States Courts' records on the expedient finding "because no deficiency is shown", when the said rule provides the Appellate Court with the power for correction on mere suggestion of falsification of the certified record of the United States Courts.

Scandalous indiscretions and alleged rude improprieties apparent on the face of the record in the proceedings in this action must merit the sincere condemnation of this Supreme Court. It seems under no other conditions, except that your petitioner was an eye-witness and the record is plain, could faith and belief in the "true end" functions of the United States Courts be so rudely and oppressively torn asunder by such gross abuses fraudulently, intentionally, and so recklessly practiced in the United States Courts.

Another set of circumstances. The deliberate smothering by withdrawal on the initiative, without authority, of and by the clerk of the trial court of certain items of pleadings, papers, etc., before the trial court of Plaintiff's Statement of Points, e. g., items numbered 6, 10, 26, and the substitution for the original paper item 29 supplied by the plaintiff, under seal, to the clerk for the record on appeal and for the certification thereof, and item 30 on which original "true" copy on file in the District Court can be found the unauthorized substitution in the handwriting of the clerk of the trial court, and thus the

forgery thereof said paper, by the striking through obliteration of the printed words Order of Entry to the handwritten words in ink e. g., Entry of Order. This brief of plaintiff herein referred to is at, Tr. 180 to 186 Inclusive, as is in opposition to corporate defendants' attorneys "Notice" re " * * * defendants will present to the court in the above matter an order in the form attached *for entry upon the court's opinion* * * *" appearing at Tr. 175. (Emphasis Supplied.)

The substantive offense in this action of the obstruction of due administration of justice is the obvious endeavor of the trial judge, the clerk of the court, and the corporate defendants' attorneys to impede or obstruct the due administration of justice (U. S. Criminal Code, section 135).

The record is clear and reasonable men could only think **the United States District Court in this action was composed of those who are the defendants.** This degree of corruption or depravity is not analogous to the otherwise held belief of American citizens in the integrity of their Federal Courts.

VIII.

Purity?
Corporate Defendants' Attorneys
Louis Quarles, David A. Fox
Lines, Spooner & Quarles
Corrupt Influence
vs.
Canons of Ethics
and
Facts of Record.

Briefly, several distinct "Canon of Professional Ethics" are set forth as an introduction to the main subject.

On the immediately recognized authority of the Wisconsin State Supreme Court, in the case of *Hepp* v. *Petrie*, 185 Wis. 350 the Supreme Court held,

> "Such authority as these canons have is derived not from the fact that they are approved by the American Bar Association *but because they are statements of principles and rules accepted and acknowledged by reputable attorneys* wherever the common law of England obtains and are recognized and applied by the courts in proper cases."

Canon of Ethics.

1. "Canon 15. How Far a Lawyer May Go in Supporting a Client's Cause

> *Nothing operates more certainly to create or to foster popular prejudice* against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties *than does the false claim, often set up by the unscrupulous* in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause."

2. "Canon 22. Candor and Fairness

Excerpt,

> *It is unprofessional and dishonorable* to deal other than candidly with the facts, * * * *in drawing* affidavits and *other documents, and in the presentation of causes.*
>
> "A lawyer should not * * * address to the judge arguments upon any point not properly calling for determination by him."
>
> *"These and all kindred practices are unprofessional and unworthy of an officer of the law charged,* as is the lawyer, *with the duty* of aiding in the administration of justice."

3. "Canon 28. Stirring Up Litigation, Directly. • • • Excerpt,—

> *It is disreputable to hunt up defects in* titles or other *causes of action and inform thereof in order to be employed to* bring suit or *collect judgment, or to breed litigation.* • • • *A duty to the public and the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.*"

4. "Canon 29. Upholding the Honor of the Profession. Excerpt,—

> *Lawyers should expose* without fear or favor before the proper tribunals *corrupt or dishonest conduct in the profession.* • • •"

Plaintiff inserts here the questions, *e. g.*,—

1. Is Judge Duffy a lawyer; Are the Judges of the Circuit Court of Appeals for the Seventh Circuit lawyers; Are the honorable Justices of the Supreme Court of the United States qualified and renowned lawyers?

2. The duty of lawyers is plain, or do lawyers uphold certain other lawyers in corrupt and dishonest conduct and thus, maintain the degradation of the dignity of the profession and a depravity not only to the law but also to the administration of justice.

5. "Canon 30. Justifiable and Unjustifiable Litigation.

> *The lawyer must decline* to conduct a civil cause or *to make a defense* when convinced that it is *intended merely to harass or to injure the opposite party or to work oppression or wrong.*" • • •
>
> "*His appearance* in court should be *deemed the equivalent to an assertion on his honor* that in his opinion his client's case is one proper for judicial determination."

6. "Canon 32. The Lawyer's Duty in the Last Analysis. Excerpt,—

> *No client,* corporate or individual, *however powerful,* nor any cause, civil or political, however important, *is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are,* * * *, or corruption of any person * * * *exercising, a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation.*"

7. "Canon 41. Discovery of Imposition and Deception. Excerpt,—

> When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; * * *"

Annot. Fraud and deception of court as grounds for disbarment, see attorney and client, Dec. Dig., Key 40-42.

8. "Canon 45. Specialists. Excerpt,—

> The canons of the American Bar Association apply to all branches of the legal profession; * * *" (All emphasis supplied *ante.*)

9. The Wisconsin Statute 256.29, attorneys regulated, provides in parts thereof,—

Section (1). *Attorney's Oath.*

> "I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;"

Section (3). *Void Contract, Legal Effect.*

> Any contract of employment obtained and made in violation of this section shall be absolutely void as to the attorney; but the client may recover any

compensation paid thereunder to or for or received by the attorney on account of such employment.

The attorney shall not be allowed to prosecute or defend the action or proceeding contemplated by such employment."

Excerpt from
Trial Court's Formal Opinion.

An excerpt from the trial court's formal opinion (Tr. 170-174) is also pertinent as an authority with respect to the duty by those whose duty it is to administer the law. Excerpt,—at printed transcript 173,—

"However, as stated heretofore, the plaintiff is a layman and should not be held to the same *fine choice of language that one skilled in the law would use.*" (Emphasis supplied.)

Corporate Defendants' Attorneys',
Louis Quarles, David A. Fox
Lines, Spooner & Quarles
Frantic Excuses
Working Both Sides of Street
In Opposite Directions.

Briefly, let's look at record for a few guiding posts.

Here Are the Facts.

A segment of the certified transcript of Proceedings, dated September 10, 1945 appears at pages 18 to 31 inclusive, of plaintiff's petition for Writ of Certiorari in this Supreme Court of the United States. A reading of the segment referred to clearly shows the propositions pleaded to the trial court and presumably what was known by the court and the corporate defendants' attorneys of record in this action.

Several excerpts,—from the fine choice of language one (corporate defendants' counsel, and the trial judge) skilled in the law would use, as appearing in the said certified

transcript and reproduced within the pages 18 to 31, inclusive, of plaintiff's said Petition of Certiorari, are to wit,—

Mr. Fox: There are four separate grounds to the motion.

(Grant's contention: Not four separate motions.)

The Court: Well, as I recall—I haven't read it completely—when you had a number of these patent attorneys he claimed he owns the patent and that General Motors has infringed on it.

Mr. Fox: That is correct.

(Grant's contention: Yet, court denied applications for judgment by default although General Motors answer was not served by mailing until December 15, 1945. Complaint was filed May 12, 1945.)

The Court: Well, certainly, the cause of action can properly be brought in this District to say "I am an owner of the patent and you violated it."

Mr. Fox: We recognize that. *There is a cause of action pleaded for a patent infringement against General Motors Corporation, and that is not attacked in this motion.* (Emphasis supplied.)

Mr. Fox: *The Complaint is in two counts. The first count* asserts a right to recovery for patent infringement, * * *

* * * there is a Prayer for relief for infringement against General Motors Sales Corporation.

Now, the third point of the motion deals with *the second count* of the Complaint which asks the damages for alleged injury caused to the plaintiff by violations of the Sherman and Clayton Acts. * * *

The only allegations of *Count 2* concerning plaintiff's alleged damage are excerpts that I would like to read.

It alleges:

> 'That, *plaintiff* subsequent to manufacturing and vending articles of said Letters Patent *was subject to great loss caused by violation of the defendants General Motors Corporation and General Motors Sales Corporation* of the Antitrust Laws and Clayton Act. * * *' (Emphasis supplied.)

Then, there is another excerpt that deals with the topic:

> 'That said violations of said acts of Congress by said defendants General Motors Corporation and General Motors Sales Corporation, and violations of the Antitrust Laws of the Wisconsin Statutes, Chapter 133, by defendants caused plaintiff to be deprived of his legal rights to continue, profitable, the promotion of his business, which business originally grew rapidly under the said Birely Patent Rights assigned to plaintiff, and thereby defendants, General Motors Corporation and General Motors Sales Corporation substantially destroyed plaintiff's business and caused great loss and damage to the plaintiff.'

The Court: Liberally construing the Complaint, isn't that a sufficient allegation?

Mr. Fox: That is true, your honor, under Count 1 of his Complaint. * * *

Now, *the Complaint is in two parts,* two separate counts; *the infringement count,* and *then this second count where he is attempting to recover damages because of alleged violations of the Sherman and Clayton Act.*

The Court: The Anti-Trust Act, I see. All right.

Mr. Fox: The other additional paragraphs requested to be stricken, for reasons of technical defects in pleading are, Paragraphs 4, 6, 10, 11, 12 and 13 of Count 1.

Conclusive Evidence
Interpretation.

What construction the corporate defendants, their attorneys, and the trial judge put on the complaint is plain. Their views are not doubtful.

Restated briefly, in good faith, common sense, and with legitimate meaning, the complaint was recognized by the corporate defendants' attorneys and the trial judge as a complaint in two counts by giving natural significance to

their words, and thus, the meaning and intent of the plaintiff adopted by them, to wit,—

Count 1. Asserts a right to recovery for patent infringement.

Count 2. Asks the damages for alleged injury caused to the plaintiff by violation of the Sherman and Clayton Acts by the defendants General Motors Corporation and General Motors Sales Corporation.

Re Count 1. Paragraphs 4, 6, 10, 11, 12, 13 of *Count 1* were requested to be stricken for reasons of technical defects in pleading.

Re Count 1 and Count 2. And if justice has, as a premise good faith, then, the corporate attorneys are concluded beyond controversy, from asserting other than, quoting corporate attorney Mr. Fox,—

> **"All of this material, specific material, is not an effort on our part to put the complaint in such shape that it doesn't state what he has already stated as a real cause of action."**

Thus spread on the record in the trial court is the conclusive evidence of the knowledge of the adverse attorneys and the trial court in connection *with two counts.*

Purity?
Of Trial Judge's Formal Opinion.

The trial judge's endeavor to alter, impede, and obstruct the due administration of justice in this action known to all interested parties as pending is clearly in evidence premised on the trial judge's formal opinion (Tr. 170-174), first exhibited officially 64 days after hearing of motion to strike, and influencing by deception the utter corrupt destruction of certain of plaintiff's civil rights by circumvention of the Federal Rules of Civil Procedure and long established principles of law.

Several authorities are referred to,—

1. Incorporated herein by reference and made applicable hereto are the citations of authorities in plaintiff's opposition and memorandum (Tr. 116 to 125, 156 to 168) before the trial court on hearing of corporate defendants' attorneys' demurrer or motion to strike.

2. Judge Lyon held, in *Leidersdorf, et al.* v. *Flint*, 50 Wis. 401, Price and Steuart, 427:

> "From an examination of some of the cases we are led to believe that the usual practice is to reserve the question of infringement until the coming in of the proofs. In cases of any doubt this seems to be the better and safer practice; for the evidence will undoubtedly throw more or less light on the question. We have concluded to adopt that course in this case. Hence, without intimating any opinion as to whether the facsimiles of defendant's trade-marks, considered alone, are or are not infringements of plaintiff's trade-mark, we hold, for the purposes of the demurrer, that the complaint states a cause of action * * *."

* The plaintiff does not contend the facts are the same, but the sentence may be well taken by analogy in the disposition of a motion to strike or demurrer.

3. Rule 8 (e) (1), F. R. C. P., e. g., "No *technical* form of pleadings or motions are required."

Rule 8 (f), F. R. C. P., Construction of Pleadings.

> "All pleadings shall be so construed as to do substantial justice."

4. Montgomery's Manual of Federal Jurisdiction and Procedure, Fourth Edition, 1942, Section 326, says concisely:

> "If a bill, in and by its own averments, states a prima facie case, **that case cannot be properly overthrown** by the chancellor merely on grounds that he judicially knows of facts that would support an answer. * * * This is so because, if such facts exist, **the complainant is entitled to a hearing where he can present and argue the facts, and such a hearing cannot be had on a demurrer to the bill.**"

5. Walker on Patents, 1937, Deller's Edition, Vol. III, Section 693, says concisely:

"A demurrer may be interposed by the defendant to test the sufficiency of the complaint in an action at law, but a general demurrer will not be sustained where there is enough in the complaint to make out a cause of action. (*Ewart Mfg. Co.* v. *Baldwin Cycle Chain Co.*, 91 Fed. 262.)

Purity† of
Trial Judge's Formal Opinion.
To Defraud the Plaintiff.

The formal opinion of the trial judge appears at printed Transcript 170-174. The significance of the word "formal" is not clearly understood. However, at page 2 of the certified transcript of proceedings of November 26, 1945 on file in this Supreme Court, the trial judge is recorded as having said, "I rendered a formal written opinion of some five pages in length on the 13th of November." It is to be understood the plaintiff does not adopt the word "formal" except for the weight of the "formal opinion" as evidence of the unrestrained interlocking passionate participation of the trial judge with the corporate defendants' attorneys, Louis Quarles and David A. Fox, in their immoral endeavor to impede and obstruct the due administration of justice in this action pending before the court.

The "formal opinion" required 64 days for its formation after hearing of motions to dismiss or to strike. Due form is obviously lacking for the reason the decision of the trial judge does not prescribe what principles of law under the Federal Rules of Civil Procedure grant jurisdiction to **the trial judge to defraud the plaintiff**, on defendants' motion to dismiss or to strike, of—

(a) two full counts against one corporate defendant,

(b) one full count against other corporate defendants, and

(c) the current procedural law which transcends the directives of section 3, pleadings and motions of the F. R. C. P., for the purpose of accomplishing the result, of striking or dismissing, and thus defrauding the plaintiff out of his, verified averments within a complaint on the defendants' attorneys plea of technical defects in pleading.

Substantive Rights Lost
by
Defrauding Procedural Obstructions.

The plaintiff insists he has been defrauded by the trial judge, F. Ryan Duffy, judge of the United States District Court for the Eastern District of Wisconsin in the trial judge's formal opinion (Tr. 170-174) dated the 13th day of November, A. D. 1945.

This opinion, fraudulently denies to this plaintiff the right of trial where he can fully present and argue the ultimate facts set forth in the plaintiff's verified complaint, for due legal protection of plaintiff's substantive rights.

This opinion is nothing short of actual or positive fraud employed to intentionally impede and obstruct the due administration of justice by the cunning deception embodied within the trial judge's opinion to circumvent, the prescribed Federal Rules of Civil Procedure, and, to cheat and/or deceive this plaintiff of the due administration of justice.

The undue influence of the trial judge in connection with the severity and injustice of the said opinion, and, **with oppression of the plaintiff by the excessive abuse of discretion**, the trial judge has placed intolerable restraint on the plaintiff in the preparation of his case for trial because of the confusion hence existing and the large amount of distraction due to the necessity of preparing for appeal and/or on Petition of Writ of Certiorari, all of

which, has impeded and obstructed the due administration of justice in this pending action.

Purity?
Pure "Stealing" in
"Entry of" Order
for
"Entry Upon" the Court's Opinion.

Within 6 days after the date of the trial judge's formal opinion the corporate defendants' attorneys served by mailing on November 19, 1945 a notice with a proposed order attached (Tr. 175-178), for entry upon the court's opinion, to be heard on November 26, 1945.

The fact is the corporate defendants' attorneys proposed "Entry Upon" order does seek "entry" (an act essential to burglary) "upon" (hostile to authority) the trial judge's opinion in a form and order which is not analogous to the court's formal opinion. An inspection will show the lack of purity in item IV (Tr. 177) and in item VI (Tr. 178) of the proposed "Entry Upon" order when read with the trial judge's formal opinion (Tr. 170-174).

The plaintiff's opposition to the hearing of said notice appears at Tr. 180-186.

Plaintiff's opposition to the "Entry Of" the "Entry Upon" order appears in affidavit form, an answer to order of court (Tr. 201-217).

The last two paragraphs of plaintiff's said opposition, concisely, indicating **lack of Due Process of Law** and **Equal Protection of the laws** are,—

> "Further, plaintiff hesitatingly says he does not know if it is ungentlemanly to denounce those who admit fraud, and all the other sordid charges defendants have admitted.
>
> On this subject, maybe the plaintiff is not sure, but

plaintiff does believe, that any attempt by strong financial interests and their attorneys, **especially where said strong financial interests are defendants and have admitted fraud, etc., on a person,** should be brought up shortly and decisively by the court for criminal contempt when also, attempting, with arrogance backed by tremendous financial resources, **to have a judge of the United States Courts become a 'wet nurse' to defendants' alleged fakery, infringement, violations of the U. S. Criminal Code and Anti-Trust and Clayton Acts, and attempt to draw said judge in as an 'accessory after the fact'** and give his stamp of approval, to issues not heard and time for answer which are not within his opinion **and which will destroy plaintiff's rights, under the theory of Equal Protection of the Laws and Due Process of the Law.''**

Special significance of items IV and VI hereinbefore referred to, is in clear evidence, as a proximate cause of defrauding plaintiff of his procedural rights under the F. R. C. P. on the premise the ''Entry Of'' order for ''Entry Upon'' the court's opinion was not signed until adopted verbatim by the trial judge on November 29, 1945, at 3 P. M. (Tr. 222), and, as of November 26, 1945 the plaintiff had on file, and had duly served, plaintiff's Applications for Judgments by Default (Tr. 189-199 Incl.).

The facts, time factors, were set out and were supported by affidavit form, and were concerned with certain periods of time, hence the filing of the complaint on May 12, 1945 to which complaint the corporate defendants failed to present either answer or other defenses and objections pursuant to Rule 12, F. R. C. P.,—to wit,—

1. Default of 199 days;
2. Default of 205 days;
3. Default of 73 days;
4. Default of 35 days;
5. Default of 126 days and/or 133 days.

(Tr. 189-199 Incl.)

Purity?
Of Fraud in
Court Order, December 3, 1945.

This order has hereinbefore been referred to as an endeavor to alter the plaintiff rights by deception touching circumvention.

On the ground the said order,—

(a) denies a provisional remedy,

(b) **projects a fraud into the records of the United States Courts,—**

the plaintiff insists an appeal is a matter of absolute right. The fraud tends to operate against the plaintiff and for the corporate defendants.

Purity?
On Appeal.

The plaintiff-appellant's Emergency Petition and Brief to void the Appellees' Attorneys' Motion and Brief to Dismiss is a matter of record (Tr. 311-342).

The propositions of law plaintiff-appellant relied on to sustain the appeal is a matter of record (Tr. 336-341).

The citation of a Seventh Circuit authority by the appellant in connection with final orders on appeal in the Seventh Circuit, *Karl Kiefer Mach. Co.* v. *U. S. Bottlers Machinery Co.*, C. C. A. Ill. 1939, 108 F. 2d 469, reversed on other grounds 113 F. 2d 356, did not cause the Seventh Circuit Appellate Court to give validity to a previous ruling made in the Seventh Circuit Appellate Court. Rather, the Appellate Court adopted a rule of construction and seemingly justified the rule solely because it did enable the court to drop below and degrade their prior ruling herein set forth.

With no intention of disrespect or unkindness to the Honorable Judges of the Appellate Court it does not seem appropriate for that court to be a "wheelhorse" for the

improprieties hereinbefore set forth in connection with the trial judge and the corporate defendants' attorneys, particularly as the expediency, adopted by the Appellate Court, impedes and obstructs the due administration of justice in this pending action.

It seems well settled the reviewing court is authorized and commanded to look to the entire record before it, *Buessel* v. *United States,* (2 Cir. 1919) 258 F. 811, 820, 170 C. C. A. 105. On this premise, in the record at Tr. 339-340 appears the authorities, *e g.,*

> Order sustaining demurrer to and striking out pleading or dismissing cause of action is ordinarily appealable. *City of Waco* v. *United States Fidelity & Guaranty Co.,* (C. C. A. Tex. 1934), 67 F. (2d) 785, reversed on other grounds 55 S. Ct. 6, 293 U. S. 140, 79 L. Ed. 244.
>
> A judgment dismissing a count on ground that it failed to state a claim on which relief could be granted was appealable as a "final judgment". *Modin* v. *Matson Nav. Co.,* C. C. A. Cal. 1942, 128 F. 2d 194.
>
> An order dismissing complainant's second cause of action for unfair competition because of lack of jurisdiction and because of failure to state facts sufficient to constitute a cause of action was an "appealable order". *Musher Foundation* v. *Alba Trading Co.,* C. C. A. N. Y., 1942, 127 F. 2d 9, certiorari denied 63 S. Ct. 33, 317 U. S. 641, 87 L. Ed. 517.

An honest review of the record on appeal would precisely indicate the trial judge, in effect, had **fraudulently** refused to try the case set out in the verified complaint and to which neither, the trial judge nor the corporate defendants' attorneys had not been deceived.

Purity?
Dismissed in Appellate Court.

The Appellate Court dismissed the appeal for the reason the orders appealed from are interlocutory and not final (Tr. 382).

The substantive right as set forth by the verified complaint, by order of the Appellate Court, **did go unrecognized contrary to the prescribed principles of American Justice.**

Montgomery Manual of Federal Jurisdiction and Procedure, Fourth Edition, 1942, Section 1404, re Final Decisions, says concisely:

> "While the general rule requires that a judgment of a federal court shall be final and complete before it may be reviewed by appeal, it is well settled that an adjudication, final in its nature as to a matter distinct from the general subject of the litigation and affecting only the parties to the particular controversy, may be reviewed without awaiting the determination of the general litigation. Conversely, an adjudication final in its nature as to the general subject of the litigation may be reviewed without awaiting the determination of a separate matter affecting only the parties to such particular controversy."

Walker on Patents, 1937, Deller's Edition, Vol. III, Section 622, says concisely:

> "A final decree will be entered in favor of the defendant, if a motion to dismiss is granted, * * *."

IX.

In the Supreme Court of the United States.

Plaintiff respectfully insists he has presented the record, under great difficulties Tr. 418 (p. 250), Tr. 435, and the record is clear,

1. There is a conflict of decisions in the Appellate Courts in connection with the meaning of "final orders".
2. That the lower level courts have departed from the accepted course of judicial proceedings as to require the supervisory power of this Supreme Court to afford relief to the plaintiff thus injured.
3. Any default in the printing of the record in the customary official manner is attributable solely to official delinquency.
4. The twenty-six questions presented on Petition for Writ of Certiorari appears at pages 41 to 51.
5. The reasons relied on for allowance of writ appear at pages 51 to 54. The reasons number eleven.

For an added contention your petitioner respectfully shows to this court, now, in the court action, *e. g.*, *American Bell Tel. Co.* v. *People's Tel Co.*, C. C. N. Y. (1884) 22 F. 309, decree affirmed (1887) 126 U. S. 1, 8 S. Ct. 778, 31 L. Ed. 863; the court held,

Falsus in Uno, Falsus in Omnibus.

"False in one thing, false in everything."

"When a witness falsifies a fact in respect to which he cannot be presumed liable to mistake, the courts are bound, upon principles of law, morality, and justice, to apply the maxim, *falsus in uno, falsus in omnibus.*"

This long established principle is duly applicable to the denials of record by the United States Federal Courts in this action of plaintiff's substantive rights, all of which impedes, obstructs the due administration of justice and is violently oppressive to your petitioner.

Fraud is an absolute ground for the right to appeal. *Certainly, any other decision would be harsh.* There is no justification for fraud in American Jurisprudence.

Conclusion.

Wherefore, your petitioner, Roy Grant, Jr., respectively prays that the Writ of Certiorari be granted.

I have the honor to remain,

Respectfully yours,

ROY GRANT, JR.,
Petitioner.

ROY GRANT, JR.,
P. O. Box 1695,
Milwaukee 1, Wisconsin.

APPENDIX.

IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF WISCONSIN.

ROY GRANT, JR., doing business as No Sleet Windshield Heater Company,
Plaintiff,
vs.
GENERAL MOTORS CORPORATION, a corporation, and GENERAL MOTORS SALES CORPORATION, a dissolved corporation,
Defendants.

ORDER.

It appearing to the Court that plaintiff, appellant, is unable to file his Statement of Points that he intends to rely upon in the appeal within the forty days after filing the Notice of Appeal.

IT IS ORDERED that the time for filing Record on Appeal and docketing the action herein in the Circuit Court of

Appeals for the Seventh Circuit be, and that same is hereby extending ten days to and including February 6, 1946.

Dated this 25th day of January, 1946.

(Printed) F. RYAN DUFFY,

(SEAL OF DISTRICT COURT) *U. S. District Judge.*

Attested True Copy:

/s/ B. H. WESTFAHL,

Clerk.

Endorsed: "Filed Jan. 25, 1946. (Printed) B. H. Westfahl, Clerk."